IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY NINETH DAY OF JULY
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE Mr. JUSTICE BILAL NAZKI

and
THE HON'BLE Mr. JUSTICE S.ANANDA REDDY

WRIT PETITION NO : 13293 of 2004

Between:

M/s.Sri Radhakrishna Timber Depot, Chuttugunta, Vijayawada-4, Krishna Dist. Rep. by its Authorised Signatory Mr.Challakolusu Kondala Rao.

..... PETITIONER

AND

1. The Additional Commissioner, Commercial Taxes, (Legal), office of commissioner of Commercial Taxes,M.J.Road, Nampally, A.P.Hyderabad.
2. The Commercial Tax officer, Suryaraopet Circle, Vijayawada.

.....RESPONDENTS.

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue Writ of Certiorari or any other appropriate writ or order or direction calling for the records of the 1st Respondent dt.25-5-2004 in Commissioner of Commercial Taxes Ref.No.LV(2)/2322/03 and quash the same as arbitrary, contrary to law and against the weight of evidence and probabilities of the petitioner's case and consequently grant stay of collection of disputed penalty of Rs.6,66,630/- under Section 14(8)(b) of the Act for the assessment year 1997-98 pending disposal of the appeal before the sales Tax Appellate Tribunal in T.A.No.1415/2003.

For the Petitioner: Mr.SHAIK JEELANI BASHA, Advocate.

For the Respondents: Mr.K.Raji Reddy

Spl. G.P. for Commercial Taxes.

The Court made the following :

ORAL ORDER:

(per The Honourable Sri Justice BILAL NAZKI)

Heard the learned counsel for parties, and, with their consent, the Writ Petition is disposed of at this stage.

Pending appeal, stay application has been dismissed by the Additional Commissioner of Commercial Taxes. The case of the petitioner is that penalty was to be levied on him under Section 14(8)(b) of the Andhra Pradesh General Sales Tax Act, 1957 (for short "the Act"), which provides maximum amount of one half of the tax liability as penalty, whereas the authorities have wrongly applied Section 14(8)(a) of the Act and levied three times penalty, which is illegal.

Prima facie, we feel that the writ petitioner could have been levied penalty under Section 14(8)(b) of the Act, which is clear even from the order of the concerned authority. However, that is a matter to be considered by appellate authority. In that view of the matter, the maximum penalty that could have been imposed upon the petitioner was Rs. 1,11,105-00. But, now, he has been penalised with Rs. 6,66,630-00. We set aside the order of the authority-below and direct that there shall be stay till the appeal is disposed of, provided, the petitioner deposits an amount of Rs. 50,000/- within a period of six week from today.

Any observation made in this order is only for the purpose of considering whether stay should have been granted or not pending appeal and should not be taken as expression of opinion on merits of appeal.

The Writ Petition is accordingly allowed. No costs.

_____

BILAL NAZKI, J.

29.7.2004.

_____

S.ANANDA REDDY, J.

VR.

To

1. The Additional Commissioner, Commercial Taxes, (Legal), office of commissioner of Commercial Taxes,M.J.Road, Nampally, A.P.Hyderabad.
2. The Commercial Tax officer, Suryaraopet Circle, Vijayawada.

3. Two CCs to Spl. Government Pleader for Commercial Taxes, High Court Buildings, Hyderabad. (OUT)

4. Two CD copies.